TIMBALAN MENTERI KESELAMATAN DALAM NEGERI, MALAYSIA & ORS v. ONG SAN HUEI

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: W-01(NCVC)(W)-14-01-2016]
25 APRIL 2017

PREVENTIVE DETENTION: *Detention order – Validity of – Habeas corpus – Action filed by plaintiff for declaration and consequential relief in form of damages for false imprisonment – Second extended detention order issued under s. 11A(1)(a)(aa) of Dangerous Drugs (Special Preventive Measures) Act 1985 to extend duration of first extended detention order – Whether there was non-compliance of procedural requirement – Whether bad in law and of no effect – Res judicata – Whether applied – Whether suit an attempt to re-litigate original case in another court – Whether s. 11C applied to oust jurisdiction of court to try suit for false imprisonment – Whether award handed down manifestly high and excessive*

CIVIL PROCEDURE: *Habeas corpus – Preventive detention – Detention order – Validity of – Action filed by plaintiff for declaration and consequential relief in form of damages for false imprisonment – Second extended detention order issued under s. 11A(1)(a)(aa) of Dangerous Drugs (Special Preventive Measures) Act 1985 to extend duration of first extended detention order – Whether there was non-compliance of procedural requirement – Whether bad in law and of no effect – Res judicata – Whether applied – Whether suit an attempt to re-litigate original case in another court – Whether s. 11C applied to oust jurisdiction of court to try suit for false imprisonment – Whether award handed down manifestly high and excessive*

The plaintiff was subjected to preventive detention for alleged involvement in dangerous drug trafficking activities by the first and second defendants under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). A detention order ('DO') was issued by the first defendant under s. 6(1) of the Act whereby the plaintiff was ordered to be detained at a detention centre in Muar for a period of two years commencing from 6 November 2004. An extended detention order ('first EDO') was issued by the first defendant under s. 11A(1)(a)(aa) of the Act directing that the duration of the DO be extended for a period of another two years commencing from 5 November 2006. The first defendant then issued an order ('suspension order') under s. 7(1) of the Act suspending the first EDO subject to a restriction order requiring the plaintiff to reside within the District of Ipoh, Perak. Subsequently, the second defendant issued an order ('revocation order') under s. 7(3) of the Act, revoking the suspension order. As a result,

the plaintiff was directed to be returned to the detention centre to be detained for the remaining duration of the EDO. The second defendant issued a second extended detention order ('second EDO') under s. 11A(1)(a)(aa) of the Act extending the duration of the first EDO for a period of two years commencing from 4 November 2008 and expiring on 3 November 2010. The plaintiff then filed an application at the Shah Alam High Court for writ of *habeas corpus*. The Shah Alam High Court held that the plaintiff's detention was unlawful and the court issued the writ of *habeas corpus*. The plaintiff then filed a writ at the Kuala Lumpur High Court against the first to fifth defendants for false imprisonment and for general, exemplary, aggravated and special damages. The Kuala Lumpur High Court allowed the plaintiff's claim and awarded general damages in the sum of RM300,000. Hence, the defendants appealed. The issues that arose were (i) whether the second EDO was not issued in accordance with the procedural requirements of the Act; (ii) whether the instant suit was an attempt to re-litigate the original case; (iii) whether s. 11C of the Act applied to oust the jurisdiction of the court to try the plaintiff's suit against the defendants for false imprisonment; and (iv) whether the award given was so excessive or insufficient as to lead to the conclusion that some error in principle had taken place.

Held (dismissing appeal with costs)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

(1) The power of the Minister to extend a detention order must be exercised strictly within the provisions of s. 11A of the Act. In this instance, however, the second defendant issued the second EDO to extend the duration of the first EDO pursuant to sub-s. 11A(1)(a)(aa) which relates to a detention order made under sub-s. 6(1), a detention order suspended under sub-s. 7(1) of the Act. This was a clear non-compliance of the procedural requirement of the Act governing the exercise of the second defendant's power under s. 11A. As the second EDO was wrongly issued under s. 11A(1)(a)(aa), the second EDO was bad in law. Consequently, the second EDO was null and void and of no effect. It followed that the detention of the plaintiff under the second EDO was also bad in law. (para 18)

(2) The defendants' argument was that the instant suit was an attempt to re-litigate the original case. However, the Shah Alam *habeas corpus* application was predicated on securing the immediate release of the plaintiff; it was not a writ action. The present action filed by the plaintiff was for a declaration and consequential relief in the form of damages for false imprisonment. The Shah Alam *habeas corpus* decision was not a bar to the judge making a finding on the validity of the second EDO. On the

other hand, given that the defendants did not appeal against the Shah Alam *habeas corpus* decision, it was not open to the defendants to challenge the said decision at the trial of this action. (para 20)

(3) Insofar as the ouster clause in s. 11C read together with s. 11D of the Act was concerned, they only applied to oust the court's jurisdiction if the second defendant had acted in accordance with the law when he issued the second EDO. It had been clearly established on the undisputed facts that there was a non-compliance with the procedural requirement of the Act when the second defendant wrongly issued the second EDO under sub-s. 11A(1)(a)(aa) instead of sub-s. 11A(4). In other words, the second defendant did not act in accordance with the Act. Thus, s. 11C did not apply to oust the jurisdiction of the court to try the plaintiff's suit against the defendants for false imprisonment. (para 21)

(4) The fact that the award given may be slightly high or low was not a sufficient ground to interfere. Even if this court was inclined to differ on the quantum, it is trite that the award is ultimately a matter of the trial judge's discretion. Therefore, this court would be slow to interfere with the award. There was nothing to show that the award of RM300,000 was manifestly high or that the award was a wholly erroneous estimate of the damages or wrong in law. (para 23)

Bahasa Malaysia *Headnotes*

Plaintif tertakluk pada tahanan pencegahan kerana didakwa terlibat dengan aktiviti pengedaran dadah berbahaya oleh defendan pertama dan kedua bawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta'). Satu perintah tahanan ('PT') dikeluarkan oleh defendan pertama bawah s. 6(1) Akta memerintahkan plaintif ditahan di sebuah pusat tahanan di Muar untuk tempoh dua tahun bermula daripada 6 November 2004. Satu perlanjutan perintah tahanan ('PPT pertama') dikeluarkan oleh defendan pertama bawah s. 11A(1)(a)(aa) Akta mengarahkan tempoh PT dilanjutkan untuk dua tahun lagi bermula daripada 5 November 2006. Defendan pertama kemudiannya mengeluarkan satu perintah ('perintah penggantungan') bawah s. 7(1) Akta menggantungkan PPT pertama tertakluk pada perintah sekatan yang memerlukan plaintif tinggal di Daerah Ipoh, Perak. Seterusnya, defendan kedua mengeluarkan perintah ('perintah pembatalan') bawah s. 7(3) Akta, membatalkan perintah penggantungan. Akibatnya, plaintif diarahkan untuk kembali ke pusat tahanan untuk ditahan bagi baki tempoh PPT. Defendan kedua mengeluarkan lanjutan perintah tahanan kedua ('PPT kedua') bawah s. 11A(1)(a)(aa) Akta melanjutkan tempoh PPT pertama untuk tempoh dua tahun bermula daripada 4 November 2008 dan tamat pada 3 November 2010. Plaintif kemudiannya memfailkan permohonan di

Mahkamah Tinggi Shah Alam untuk writ *habeas corpus*. Mahkamah Tinggi Shah Alam memutuskan bahawa penahanan plaintif tidak mengikut undang-undang dan mahkamah mengeluarkan writ *habeas corpus*. Plaintif kemudiannya memfailkan writ di Mahkamah Tinggi Kuala Lumpur terhadap defendan pertama hingga defendan kelima untuk penahanan salah dan untuk ganti rugi am, teladan, teruk dan khas. Mahkamah Tinggi Kuala Lumpur membenarkan tuntutan plaintif dan mengawardkan ganti rugi am dalam jumlah RM300,000. Oleh itu, defendan-defendan merayu. Isu-isu yang timbul adalah (i) sama ada PPT kedua tidak dikeluarkan menurut keperluan prosedur Akta; (ii) sama ada kes ini adalah cubaan untuk melitigasikan semula kes asal; (iii) sama ada s. 11C Akta terpakai untuk mengetepikan bidang kuasa mahkamah membicarakan guaman plaintif terhadap defendan-defendan untuk penahanan salah; dan (iv) sama ada award adalah terlalu tinggi atau terlalu rendah sehingga boleh mencapai kesimpulan kekhilafan prinsip telah berlaku.

Diputuskan (menolak rayuan dengan kos)
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Kuasa Menteri untuk melanjutkan perintah tahanan harus dilaksanakan dalam ruang lingkup peruntukan s. 11A Akta. Dalam kes ini, walau bagaimanapun, defendan kedua mengeluarkan PPT kedua untuk melanjutkan tempoh PPT pertama menurut sub-s. 11A(1)(a)(aa) yang berhubungan dengan perintah tahanan dibuat bawah sub-s. 6(1), satu perintah tahanan yang digantung bawah sub-s. 7 Akta. Ini adalah satu ketidakpatuhan jelas keperluan prosedur Akta yang mengawal pelaksanaan kuasa defendan kedua bawah s. 11A. Oleh kerana PPT kedua telah salah dikeluarkan bawah s. 11A(1)(a)(aa), PPT kedua adalah salah dari segi undang-undang. Akibatnya, PPT kedua adalah tidak sah dan tidak mempunyai kesan. Dengan itu penahanan plaintif bawah PPT kedua adalah juga salah dari segi undang-undang.

(2) Hujahan defendan-defendan adalah bahawa kes ini satu cubaan untuk melitigasi semula kes asal. Walau bagaimanapun, permohonan *habeas corpus* Shah Alam berdasarkan pada mendapatkan pembebasan segera plaintif; ia bukan satu tindakan writ. Tindakan yang difailkan plaintif ini adalah satu pengisytiharan dan relif berbangkit dalam bentuk ganti rugi untuk penahanan salah. Keputusan *habeas corpus* Shah Alam bukan halangan kepada hakim membuat dapatan kesahan PPT kedua. Sebaliknya, memandangkan defendan-defendan tidak merayu terhadap keputusan *habeas corpus* Shah Alam, tidak terbuka kepada defendan-defendan mencabar keputusan tersebut di perbicaraan guaman ini.

(3) Berkenaan klausa penyingkiran s. 11C dibaca bersama s. 11D Akta, ia hanya terpakai untuk mengetepikan bidang kuasa mahkamah jika defendan kedua bertindak menurut undang-undang apabila mengeluarkan PPT kedua. Sudah jelas dibuktikan atas fakta-fakta yang tidak dipertikaikan bahawa terdapat ketidakpatuhan keperluan prosedur Akta apabila defendan kedua telah dengan salah mengeluarkan PPT kedua bawah sub-s. 11A(1)(a)(aa) dan bukan sub-s. 11A(4). Dalam erti kata lain, defendan kedua tidak bertindak menurut Akta. Oleh itu, s. 11C tidak terpakai untuk mengetepikan bidang kuasa mahkamah membicarakan guaman plaintif terhadap defendan-defendan untuk penahanan salah.

(4) Fakta bahawa award yang diberikan mungkin terlalu tinggi atau terlalu rendah bukan alasan memadai untuk campur tangan. Sekalipun mahkamah ini cenderung untuk mempertikaikan kuantum, ia matan bahawa award adalah hal budi bicara hakim bicara. Oleh itu, mahkamah ini enggan mengganggu award itu. Tiada apa-apa untuk menunjukkan award RM300,000 adalah terlalu tinggi atau award adalah satu anggaran ganti rugi yang salah atau berlakunya kekhilafan undang-undang.

Case(s) referred to:

Andrew Thamboosamy v. Superintendent of Pudu Prisons, Kuala Lumpur [1976] 1 LNS 5 FC ***(refd)***

Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd [2015] 2 CLJ 1062 CA ***(refd)***

Datuk Seri Ahmad Said Hamdan & Ors v. Tan Boon Wah [2010] 6 CLJ 142 CA ***(refd)***

Davies v. Powell Duffryn Associated Colleries Ltd [1942] AC 601 ***(refd)***

E Gopal & Anor v. Awang Mona [1976] 1 LNS 23 HC ***(dist)***

Flint v. Lovell [1935] 1 KB 354 ***(refd)***

Jamiah Holam v. Koon Yin [1982] 1 LNS 89 HC ***(refd)***

Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister Of Home Affairs), Malaysia [1969] 1 LNS 65 FC ***(refd)***

Kerajaan Malaysia & Ors v. Nasharuddin Nasir [2004] 1 CLJ 81 FC ***(refd)***

Kumaran Suppiah v. Dato' Noh Hj Omar & Anor [2006] 4 CLJ 675 FC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***

Liversidge v. Sir John Anderson & Anor [1942] AC 206 ***(dist)***

Ng Moon Leong v. Seema Balvantrai Goda [1986] 1 LNS 114 CA ***(refd)***

Rasidin Partorjo v. Frederick Kiai [1976] 1 LNS 123 FC ***(refd)***

Tan Kuan Yau v. Suhindrimani Angasamy [1985] 1 CLJ 429; [1985] CLJ (Rep) 323 FC ***(refd)***

Tan Sri Norian Mai & Ors v. Chua Tian Chang & Ors [2015] 6 CLJ 1045 CA ***(refd)***

Thompson v. Commissioner of Police of the Metropolis [1998] QB 498 ***(refd)***

Topaiwah v. Salleh [1968] 1 LNS 161 FC ***(refd)***

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 7(1), (3), 11A(1)(a)(aa), (4), 11C(1), 11D
Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969, s. 6(1)
Federal Constitution, art. 5(1)

For the appellants - Normastura Ayub; SFC
For the respondent - G Subramaniam Nair & Ebrina Zubir; M/s Maniam Nair & Co

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: S21 NCVC-45-2011 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] At the High Court, the plaintiff sued the first to fifth defendants for damages for false imprisonment relating to the plaintiff's detention under a detention order. At the conclusion of the trial of the action, the learned judge found for the plaintiff and awarded general damages in the global sum of RM300,000.

[2] This is the first to fifth defendants' appeal against the decision of the learned judge on liability and quantum. The plaintiff cross-appealed against part of the decision disallowing his claim for loss of income; the plaintiff's cross-appeal was withdrawn at the hearing of the appeal. After hearing of counsel on 16 August 2016, we found no merits in the issues raised and dismissed the first to fifth defendants' appeal with costs. Our grounds of decision are as follows.

The Salient Facts

[3] The plaintiff was subjected to preventive detention for alleged involvement in dangerous drug trafficking activities by the first and second defendants under the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) from 6 November 2004 to 23 October 2009. In order to appreciate the background leading to the plaintiff's suit, it is necessary to set out the following chronology of events:

5 November 2004	Detention order ("DO") issued by the first defendant under s. 6(1) of Act 316 whereby the plaintiff was ordered to be detained at a detention centre in Muar for a period of two years commencing from 6 November 2004.

6 November 2004	Plaintiff detained in Pusat Pemulihan Akhlak, Muar pursuant to the DO.
5 November 2006	Extended detention order ("first EDO") issued by the first defendant under s. 11A(1)(a)(aa) of Act 316 directing that the duration of the DO be extended for a period of two years commencing from 5 November 2006.
11 April 2007	First defendant issued an order ("suspension order") under s. 7(1) of Act 316 suspending the first EDO with effect from 13 April 2007 subject to a restriction order requiring the plaintiff to, *inter alia* reside within the District of Ipoh, Perak.
18 July 2008	Second defendant issued an order ("revocation order") under s. 7(3) of Act 316, revoking the suspension order. As a result, the plaintiff was directed to be returned to the Muar Detention Centre to be detained for the remaining duration of the EDO.
3 November 2008	Second defendant issued second extended detention order ("second EDO") under s. 11A(1)(a)(aa) of Act 316 extending the duration of the first EDO for a period of two years commencing from 4 November 2008 and expiring on 3 November 2010.
3 August 2009	Plaintiff filed application at Shah Alam High Court for a writ of *habeas corpus*.
23 October 2009	Shah Alam High Court held that plaintiff's detention was unlawful and the court issued writ of *habeas corpus.*
22 January 2011	Plaintiff filed writ at Kuala Lumpur High Court against first to fifth defendants for false imprisonment and for general, exemplary, aggravated and special damages.
11 December 2015	Kuala Lumpur High Court allowed plaintiff's claim and awards general damages in the sum of RM300,000 together with interest and costs.

Findings Of The High Court

[4] On the issue of liability, the learned judge found that the detention of the plaintiff from 3 November 2008 (the date the second EDO was issued) until 23 October 2009 (the plaintiff's release pursuant to the decision of the Shah Alam High Court in the *habeas corpus* application) was unlawful and wrongful on the following grounds:

a) The second EDO issued by the second defendant extending the first EDO was not made in accordance with the law. Instead of exercising his power under s. 11A(4), the second defendant wrongly invoked s. 11A(1)(a)(aa) of Act 316 in making the second EDO;

b) The learned judge rejected the defendants' argument that the second EDO was mistakenly issued under s. 11A(1)(a)(aa) of Act 316 because it was not the defendants' pleaded case that the second EDO was mistakenly issued. Further, the second defendant had averred in his affidavit that the second EDO was valid and proper; there was also no averment that it was mistakenly issued;

c) Provisions of law that empower the Minister to detain a person under Act 316 should always be construed strictly and not liberally (*Andrew Thamboosamy v. Superintendent of Pudu Prisons, Kuala Lumpur* [1976] 1 LNS 5; [1976] 2 MLJ 156 (FC));

d) The ouster clause in s. 11C(1) read together with s. 11D of Act 316 is not applicable in the circumstances of the case as the second EDO was clearly wrong and was not made in accordance with the law; and

e) *Res judicata* does not apply. The Shah Alam *habeas corpus* application is not a bar to the court in making a finding on the validity of the second EDO. Further, the learned judge did not have the opportunity of knowing the grounds relied upon by the judge in the Shah Alam *habeas corpus* case.

[5] As to quantum, the learned judge premised the assessment of damages on the total period of 355 days under which the plaintiff was wrongfully detained. In awarding a global sum of RM300,000 as general damages , the learned judge applied the 'progressively reducing scale' test as explained in *Thompson v. Commissioner of Police of the Metropolis* [1998] QB 498. The learned judge considered the principle that damages for false imprisonment must be grounded on loss of dignity and not pecuniary loss and that the amount of damages must be sufficient enough to give reality to the protection afforded by law to personal freedom.

[6] The learned judge did not award any aggravated damages to the plaintiff as there was no evidence to show any aggravating features such as humiliating circumstances to justify the making of the same. The learned judge did not make any award for exemplary damages and loss of income.

Submission Of Parties

[7] Learned Senior Federal Counsel (SFC) for the defendants canvassed three points on liability and one point on quantum. First, he argued that the learned judge erred in relying on *Andrew Thamboosamy (supra)* in holding that the power to detain given by law must be construed strictly. The learned judge should have applied the principle that so long as the exercise of the powers by the defendants is done within the ambit of Act 316 and is done *bona fide*, the question as to the defendants' competency or otherwise is not within the competence of the court (*E Gopal & Anor v. Awang Mona* [1976] 1 LNS 23; [1978] 2 MLJ 251; *Andrew s/o Thamboosamy (supra)*; *Liversidge v. Sir John Anderson & Anor* [1942] AC 206). The mistake in the second EDO is only in form and not in substance. At all material times, the defendants had the power to issue the second EDO within the ambit of Act 316. There is no evidence to show that the second defendant did not adequately apply his mind to the desirability of detaining the plaintiff (*Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129). As such, the second EDO is valid for being issued under Act 316.

[8] Second, learned SFC argued that the doctrine of *res judicata* applies to bar the plaintiff from arguing that the ouster clause in s. 11C of Act 316 is not applicable to the plaintiff's claim in the court below as the same point has been raised in the Shah Alam *habeas corpus* application. Further, in both cases, the parties and issues are the same (*Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd* [2015] 2 CLJ 1062 (CA)).

[9] The third point relates to the ouster clause in s. 11C. Learned SFC argued that Parliament's intention in amending Act 316 by adding new ss. 11C and 11D is to preclude any judicial review or jurisdiction of any court over any act or decision of the Minister in the exercise of their discretionary power save in regard to questions on compliance with any procedural requirement governing such act or decision. As such, the court should give effect to the clear words of Act 316 (*Datuk Seri Ahmad Said Hamdan & Ors v. Tan Boon Wah* [2010] 6 CLJ 142; [2010] 3 MLJ 193 (CA); *Kumaran Suppiah v. Dato' Noh Hj Omar & Anor* [2006] 4 CLJ 675 (FC); *Lee Kew Sang v. Timbalan Menteri Dalam Negeri Malaysia & Ors* [2005] 3 CLJ 914; *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81 (FC)).

[10] As to quantum, learned SFC argued that the learned judge erred in applying the 'progressively reducing scale' test without considering that the plaintiff had been detained for about five years before the second EDO was

issued. The plaintiff had been arrested and detained since 6 November 2004 until the writ of *habeas corpus* was issued by the Shah Alam Court on 23 October 2009. As such, learned SFC argued that a figure of between RM150,000 to RM200,000 is a fair and reasonable sum as general damages (*Thompson v. Commissioner of Police of the Metropolis (supra)*).

[11] In reply, learned counsel for the plaintiff argued that on the issue of liability, there was no misdirection on the law and on the facts by the learned trial judge. He argued that the approach adopted by the learned judge as reflected in her written judgment is correct and that there is no appealable error to justify any intervention by this court.

[12] As to quantum, learned counsel for the plaintiff argued that the learned judge had correctly applied the 'progressively reducing scale' test. Learned counsel argued that the plaintiff worked as an offshore oil driller and has suffered tremendously during the long period of wrongful detention. The amount of RM300,000 awarded by the learned judge for wrongful detention of 355 days is not excessive and is reasonable. Learned counsel cited the Court of Appeal decision in *Tan Sri Norian Mai & Ors v. Chua Tian Chang & Ors* [2015] 6 CLJ 1045 where the Court of Appeal reduced the quantum of damages for false imprisonment from RM15,000 to RM10,000 per day. The award of the learned judge should be maintained as it amounts to less than RM10,000 per day.

Decision

[13] As to liability, we are satisfied that on the undisputed facts, the second EDO was not issued in accordance with the procedural requirements of Act 316. In fact, learned SFC went so far as to concede that there was a mistake – admitting to the fact that the second EDO was issued pursuant to sub-s. 11A(1)(a)(aa) instead of under sub-s. 11A(4) of Act 316.

[14] Whether or not this so-called mistake negates the lawfulness of the second EDO is a question of construction of Act 316, and in particular s. 11A which provides for the Minister's power to extend a detention order or a suspended detention order and is as follows:

> 11A(1) The Minister may at any time before the expiration of the duration of:
>
> (a) a detention order made under subsection 6(1);
>
> (b) a restriction order made under subsection 6(3); or
>
> (c) a detention order suspended under subsection 7(1)
>
> (hereinafter referred to as a "suspended detention order"),
>
> direct that the duration of the order be extended for such further period, not exceeding two years, as he may specify, commencing immediately upon the expiration of its then-current duration, and where the Minister so directs he shall set out in the direction the grounds for the extension and state whether such grounds are:

A (aa) the same as the grounds on which the order was originally made;

(bb) different from the grounds on which the order was originally made; or

(cc) partly the same grounds and partly different ground.

B (2) Where the duration of a suspended detention order is extended under subsection (1), the duration of the direction for its suspension under subsection 7(1) shall be deemed to be extended for the duration of the extension of the suspended detention order together with the restrictions and conditions imposed in respect of such suspension, subject, if the Minister so directs, to the requirement that the person against C whom the detention order was made shall enter into a fresh bond as provided in subsection 6(4), and section 7 shall apply to such extended suspension in the same manner as they apply to an original suspension under subsection 7(1).

(3) Where the direction under subsection (1) for the extension of the D duration of a detention order or a suspended detention order is on grounds which fall under paragraph (1)(bb) or (cc), sections 9 and 10 shall apply to such direction as if the direction were a fresh detention order.

(4) The duration of a detention order, or a restriction order, or a suspended detention order, which is extended under subsection (1) may, thereafter, be further extended from time to time for further periods not E exceeding two years at a time, and the provisions of this section shall apply *mutatis mutandis* in relation to each such extension.

[15] What the second EDO purported to do was to extend the period of detention of the first EDO which had been suspended on 11 April 2007 and which suspension order was later revoked on 18 July 2008. It is not in F dispute that the Minister has the power to extend the first EDO under s. 11A of Act 316. The power to extend a detention order is expressly provided under sub-s. 11A(4) which specifically relates to a detention order made under sub-s. 11A(1).

G **[16]** What is the effect of this breach of the statutory procedural requirement relating to the power to detain? At this juncture, it is necessary to remember that the liberty of the person is a fundamental right enshrined under art. 5(1) of the Federal Constitution which provides that:

5(1) No person shall be deprived of his life or personal liberty save in accordance with law. H

[17] In the oft-cited case of *Andrew Thamboosamy (supra)*, the Federal Court held that any form of detention does violence to this fundamental right of personal liberty. Accordingly, the Federal Court held that "power given by law to detain must be construed strictly and in cases of doubt or ambiguity I the court should lean in favour of the subject."

[18] Applying the aforesaid principles, the power of the Minister to extend a detention order must be exercised strictly within the provisions of s. 11A of Act 316. In this instance, however, the second defendant issued the second EDO to extend the duration of the first EDO pursuant to sub-s. 11A(1)(a)(aa) which relates to a detention order made under sub-s. 6(1) a detention order suspended under sub-s. 7(1) of Act 316. In our view, this is a clear non-compliance of the procedural requirement of Act 316 governing the exercise of the second defendant's power under s. 11A. As the second EDO was wrongly issued under s. 11A(1)(a)(aa), the second EDO is bad in law. Consequently, the second EDO is null and void and of no effect. It follows that the detention of the plaintiff under the second EDO is also bad in law. We also observe that the defendants did not appeal against the Shah Alam *habeas corpus* decision where the Shah Alam High Court found for the plaintiff on the issue of liability. As such, the defendants must be taken to have accepted the correctness and validity of the Shah Alam *habeas corpus* judgment.

[19] *E Gopal (supra)* and *Liversidge (supra)* are distinguishable on the facts. In *E Gopal (supra)*, the detention order was lawfully issued under s. 6(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969. In that case, the issue related to the validity of the detention order which was altered by the Assistant Secretary subsequent to its issue by the Minister. In *Liversidge (supra)*, the detention order was *ex facie* regular for being properly issued under the law. The issue was whether a court of law could inquire into whether, in fact, the Secretary of State had reasonable grounds for his belief that a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and direct him to be detained.

[20] We have considered the arguments relating to *res judicata* raised by the plaintiff and the defendants. The defendants' argument is that the instant suit is an attempt to re-litigate the original case. The Shah Alam *habeas corpus* application was predicated on securing the immediate release of the plaintiff; it is not a writ action. The present action filed by the plaintiff is for a declaration and consequential relief in the form of damages for false imprisonment. We agree with the learned judge that the Shah Alam *habeas corpus* decision is not a bar to the learned judge making a finding on the validity of the second EDO. On the other hand, given that the defendants did not appeal against the Shah Alam *habeas corpus* decision, we do not think it is open to the defendants to challenge the said decision at the trial of this action.

[21] Insofar as the ouster clause in s. 11C read together with s. 11D is concerned, we agree with the learned judge that they only apply to oust the court's jurisdiction if the second defendant has acted in accordance with the law when he issued the second EDO. In this instance, it has been clearly established on the undisputed facts that there was a non-compliance with the procedural requirement of Act 316 when the second defendant wrongly issued the second EDO under sub-s. 11A(1)(a)(aa) instead of sub-s. 11A(4).

In other words, the second defendant did not act in accordance with Act 316. In the circumstances, we take the view that s. 11C does not apply oust the jurisdiction of the court to try the plaintiff's suit against the defendants for false imprisonment.

[22] As to the defendants' appeal against the award of RM300,000 as general damages, the classic statement of the grounds upon which the Court of Appeal will interfere by reassessment of the damages appears in the judgment of Greer LJ in *Flint v. Lovell* [1935] 1 KB 354, CA at 360. "This court", he said:

> … will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

[23] The abovementioned principle starts upon the premise that an appellate court will interfere with an award of damages made by a judge sitting alone is trite (*Rasidin Partorjo v. Frederick Kiai* [1976] 1 LNS 123; [1976] 2 MLJ 214 FC; *Davies v. Powell Duffryn Associated Collieries Ltd* [1942] AC 601, 616-7). An appellate court should not interfere with an award of damages unless (i) it is satisfied that the judge had acted on a wrong principle of law, or has misapprehended the facts, or for some reason or other made a wholly erroneous estimate of the damages or the amount awarded so excessive or insufficient as to lead to the conclusion that some error in principle must have taken place; and (ii) it can be shown that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or some erroneous assumption of law or fact. The fact that the award may be slightly high or low is not a sufficient ground to interfere. Even if this court is inclined to differ on the quantum, it is trite that the award is ultimately a matter of the trial judge's discretion. Therefore, this court will be slow to interfere with the award (*Rasidin (supra)*; *Topaiwah v. Salleh* [1968] 1 LNS 161; [1968] 1 MLJ 284; *Tan Kuan Yau v. Suhindrimani Angasamy* [1985] 1 CLJ 429; [1985] CLJ (Rep) 323; [1985] 2 MLJ 22; *Jamiah Holam v. Koon Yin* [1982] 1 LNS 89; [1983] 1 MLJ 103; *Ng Moon Leong v. Seema Balvantrai Goda* [1986] 1 LNS 114; [1986] 2 MLJ 405). There is nothing to show that the award of RM300,000 is manifestly high or that the award was a wholly erroneous estimate of the damages or wrong in law.

[24] For the foregoing reasons, we find no merits in the issues raised by the defendants in the appeal. We therefore dismissed the appeal with costs.